



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG-2016-1022]

RIN 1625-AA08; AA00

Special Local Regulations and Safety Zones; Annually Recurring Events in Coast Guard

Southeastern New England Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

---

**SUMMARY:** The Coast Guard proposes to amend a special local regulation to change the method of providing notice to the public when enforcing the safety zone associated with the biennial Newport/Bermuda Race. The Coast Guard also proposes to establish permanent safety zones in Coast Guard Southeastern New England Captain of the Port (COTP) Zone for several recurring marine events. When the special local regulation or safety zones are activated and subject to enforcement, vessels and people may be restricted from portions of water areas that may pose a hazard to public safety. The revised special local regulation and safety zones would expedite public notification of the applicable marine events, and help protect the maritime public and event participants from hazards associated with these recurring marine events. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before  
**[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL**

## **REGISTER].**

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-1022 using the *Federal e-Rulemaking Portal* at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, contact Mr. Edward G. LeBlanc, Chief of the Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401-435-2351, e-mail [Edward.G.LeBlanc@uscg.mil](mailto:Edward.G.LeBlanc@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Acronyms**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<i><b>Federal Register</b></i>
LNTM	Local Notice To Mariners
NOE	Notice of Enforcement
NPRM	Notice of proposed rulemaking
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

The legal basis for the proposed rule is 33 U.S.C. 1225, 1226, 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones and special local regulations.

In 33 CFR part 100.119 the Coast Guard is required to publish a NOE in the Federal Register (FR) for the safety zone associated with the Newport/Bermuda Race. We have found

this process to be cumbersome for the Coast Guard and of little value to the maritime public, as few read the FR on a regular basis. For virtually all other recurring marine events in the Southeastern New England COTP Zone, including those listed in 33 CFR 165, NOE is required to be published in the weekly LNTM, a far more widely-read publication among mariners. Consequently, the Coast Guard is proposing to change the means by which we provide NOE for the Newport/Bermuda Race safety zone from the FR to the LNTM.

Likewise, most recurring marine events in the Southeastern New England COTP Zone are listed in the Table to 33 CFR 165.173. In the past few years two new recurring marine events, (1) the Fall River Grand Prix, and (2) the Cape Cod Bay Challenge, have been held in this Zone, and the Coast Guard has established safety zones through a TFR each year as necessary. This proposed rule includes these recurring events in the comprehensive list of recurring marine events in the Table at 33 CFR 165.173. By including these two newer events in the permanent regulations at 33 CFR 165, the Coast Guard will eliminate the need to establish temporary rules each year.

### **III. Discussion of Proposed Rule**

The Coast Guard proposes to change the method of providing a NOE to the public for the biennial Newport to Bermuda Race by deleting the requirement to post notice in the FR and instead require a NOE to be posted in the LNTM, as is done for all other Coast Guard-permitted recurring marine events in the Coast Guard Southeastern New England COTP zone.

The Coast Guard also proposes to established safety zones for two recently-established major annual marine events: (1) the Fall River Grand Prix, and (2) the Cape Cod Bay Challenge. The two events would be included in the Table at 33 CFR 165.173, which is a listing of recurring major marine events in the Coast Guard Southeastern New England COTP Zone. The **TABLE**

provides the event name, type, and approximate safety zone dimensions as well as approximate dates, times, and locations of the events. The specific times, dates, regulated areas and enforcement period for each event will be provided through the Local Notice to Mariners.

This proposed regulation would prevent vessels from transiting through special local regulation areas or safety zones during the periods of enforcement to ensure the protection of the maritime public and event participants from the hazards associated with listed annual recurring events. Only event sponsors, designated participants, and official patrol vessels will be allowed to enter safety zones and special local regulation areas. Spectators and other vessels not registered as event participants may not enter the regulated areas without the permission of the COTP or the COTP's designated representative. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

With respect to the change in method of providing the NOE for the Newport/Bermuda Race, this NPRM proposes utilizing an approach that the Coast Guard believes is more effective, less costly, and more flexible. By utilizing an LNTM to provide the NOE for the Newport/Bermuda race, the Coast Guard will be able to better inform waterway users in a more timely manner. With respect to the safety zones for the recurring marine events, this regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessels will only be restricted from safety zones and special local regulation areas for a short duration of time; vessels may transit in all portions of the affected waterway except for those areas covered by the proposed regulated areas, and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's representative. By including these two recurring marine events in the permanent regulation at 33 CFR 165.173, the Coast Guard will eliminate the need to establish individual temporary rules for each separate event that occurs on an annual basis, thereby limiting the costs of cumulative regulations.

Notifications will be made to the local maritime community through the LNTM in advance of the events. The Notifications will include the exact dates and times of enforcement, and no new or additional restrictions will be imposed on vessel traffic.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C.

605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This proposed rule makes an administrative change to the method of notification of one marine event, and involves the establishment of temporary safety zones in conjunction with two recurring marine events in Southeastern New England COTP Zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.



We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects**

#### *33 CFR Part 100*

Marine safety, Navigation (water), Reporting and record-keeping requirements, Waterways.

#### *33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 100 and 165 as follows:

### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Revise paragraph (c) to read as follows:

\*\*\*\*\*

(c) Effective date. This section is in effect biennially on a date and times published in the Local Notice To Mariners.

## **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

4. Add new section 8.4 and 8.5 to the Table at §165.173.

§165.173 Safety Zones for annually recurring marine events held in Coast Guard Southeastern New England Captain of the Port Zone.

\*\*\*\*\*

---

8.4	Fall River Grand Prix	<ul style="list-style-type: none"><li>• Event Type: Offshore powerboat race</li><li>• Date: One weekend (Friday, Saturday, &amp; Sunday) in August as announced in the Local Notice to Mariners.</li><li>• Time: Approximately 8 a.m. to 5 p.m. daily</li><li>• Location: Taunton River, Massachusetts, in the vicinity Fall River and Somerset, MA.</li><li>• Safety Zone Dimension: Mt Hope Bay and the Taunton River navigation channel from approximately Mt Hope Bay buoy R10 southwest of Brayton Point channel, and extending approximately two miles to the northeast up to and including Mt Hope Bay buoy C17 north of the Braga Bridge. The safety zone is encompassed by the following coordinates (NAD 83):</li></ul>															
		<table><tr><td><u>Corner</u></td><td><u>Latitude</u></td><td><u>Longitude</u></td></tr><tr><td>SW</td><td>41° 41.40'N</td><td>71° 11.15'W</td></tr><tr><td>NW</td><td>41° 41.48'N</td><td>71° 11.15'W</td></tr><tr><td>SE</td><td>41° 42.33'N</td><td>71° 09.40'W</td></tr><tr><td>NE</td><td>41° 42.42'N</td><td>71° 09.47'W</td></tr></table>	<u>Corner</u>	<u>Latitude</u>	<u>Longitude</u>	SW	41° 41.40'N	71° 11.15'W	NW	41° 41.48'N	71° 11.15'W	SE	41° 42.33'N	71° 09.40'W	NE	41° 42.42'N	71° 09.47'W
<u>Corner</u>	<u>Latitude</u>	<u>Longitude</u>															
SW	41° 41.40'N	71° 11.15'W															
NW	41° 41.48'N	71° 11.15'W															
SE	41° 42.33'N	71° 09.40'W															
NE	41° 42.42'N	71° 09.47'W															

---

---

8.5 Cape Cod Bay Challenge

- Event Type: Paddleboard excursion.
  - Date: One weekend day (Saturday or Sunday) in August.
  - Time: Approximately 4:30 a.m. to to 4:30 p.m.
  - Location: Departing from Scusset Beach, Sandwich, MA, and transiting to Wellfleet Harbor, Wellfleet, MA.
  - Position: A line drawn from Scusset Beach at approximate position 41° 47'N, 70° 30'W, to Wellfleet Harbor at approximate position 41° 53'N, 70° 02'W (NAD 83).
  - Safety Zone Dimension: Approximately 500 yards extending in each direction from the line described above.
- 

\*\*\*\*\*

Dated: February 22, 2017

Richard J. Schultz,  
Captain, U.S. Coast Guard,  
Captain of the Port Southeastern New England.  
[FR Doc. 2017-04563 Filed: 3/8/2017 8:45 am; Publication Date: 3/9/2017]